

01  
02  
03  
04  
05  
06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 RAPHAEL HENSON, ) CASE NO. C06-1006-RSL  
09 Plaintiff, )  
10 v. ) REPORT AND RECOMMENDATION  
11 J.R. CASMIRO, )  
12 Defendant. )  
13

14 Plaintiff is a state prisoner who has submitted an amended civil rights complaint pursuant  
15 to 42 U.S.C. § 1983. (Doc. #8). In the amended complaint, plaintiff appears to allege that in  
16 April 2005, a “Community Corrections Officer,” named J. R. Casmiro, improperly issued a  
17 warrant for plaintiff’s arrest, which led to plaintiff spending 23 days in confinement without legal  
18 justification. (Doc. #8 at 3). Plaintiff asserts that during his confinement, he never had a hearing  
19 and that afterwards, his term of probation was not credited with this 23-day period. (*Id.*)

20 The Supreme Court recently commented that “[f]ederal law opens two main avenues to  
21 relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and  
22 a complaint under . . . 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or to

01 particulars affecting its duration are the province of habeas corpus.” *Hill v. McDonough* ,  
02 \_\_U.S.\_\_, 126 S. Ct. 2096, 2100 (2006), *quoting Muhammad v. Close*, 540 U.S. 749, 750 (2004)  
03 (*per curiam*). “An inmate’s challenge to the circumstances of his confinement, however, may be  
04 brought under § 1983.” *Id.* (some citations omitted).

05 Here, plaintiff’s complaint, while directed at Officer Casmiro, is founded upon his  
06 contention that he spent 23 days in confinement without legal justification. Thus, plaintiff’s  
07 complaint is more a challenge to the lawfulness of his former confinement rather than to the  
08 conditions of that confinement. Accordingly, the proper vehicle for plaintiff to proceed with this  
09 challenge is a petition for a writ of habeas corpus.<sup>1</sup> Petitioner’s complaint and this action under  
10 42 U.S.C. § 1983 should therefore be dismissed without prejudice. A proposed Order is attached.

11 DATED this 22nd day of August, 2006.

12 

13 Mary Alice Theiler  
14 United States Magistrate Judge

15  
16  
17  
18  
19  
20  
21 \_\_\_\_\_  
22 <sup>1</sup> By so recommending, the court means to imply nothing regarding the merits of such a  
petition.